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October 17, 2011

The Honorable Barbara Madsen
Chief Justice, Washington State Supreme Court
415 12th Avenue SW, PO Box 40929
Olympia, Washington 98504-0929

The Honorable Charles Johnson
Justice, Washington State Supreme Court
415 12th Avenue SW, PO Box 40929
Olympia, Washington 98504-0929

Re: Proposed amendment of CrR 3.1 related to pro se defendants

Dear Chief Justice Madsen & Justice Johnson,

The Washington Association of Prosecuting Attorneys supports providing protection for victims of sexual assault who face the prospect of being cross-examined by their alleged abusers. We support amending Criminal Rule 3.1 to allow trial courts to restrict the manner and means by which pro se defendants question witnesses, including a possible third party questioning of a witness over a defendant's objection.

In Estabrook, 68 Wn.App. 309 (1993), Division II of the Washington Court of Appeals upheld the conviction of a pro se defendant on charges of indecent liberties after the trial judge conducted the actual questioning of the child victim. We believe selecting a third party to conduct the cross examination questioning of the victim would be rarely justified and rarely used, but it is needed in extreme cases. The proposed changes to the court rule should provide guidance as to what factors support using a third party questioner in those extreme cases.

The court has been provided specific language by the Washington Coalition of Sexual Assault Programs which provides the guidance necessary for the trial court to appropriately use a third party questioner instead of allowing a pro se defendant to abuse his or her victim.

Victim advocacy groups and county prosecutors from across the state support this amendment to Criminal Rule 3.1. It will provide real protection to victims while protecting the constitutional rights of a defendant to represent themselves. The advocate/prosecutor proposal establishes the trial court's authority, in the rare case, to impose a third party questioner of the victim over the pro se defendant's objection.

Safeguards within the proposal include allowing the pro se defendant to decide which questions to ask and to control the overall strategy of the defense.

Additional safeguards include having the trial court conduct a hearing outside the presence of the jury and find substantial evidence that an important state interest exists in order to justify restricting the defendant's right to directly ask questions of a witness. The court can also instruct the jury that the defendant continues to represent him/herself throughout the proceeding and that the defendant has prepared the questions.

In rare instances, we support the court's inherent authority to control the courtroom and protect a witness' right to reasonably communicate to the jury. The defendant's right to cross examine will remain intact by having the third party ask questions prepared by the defendant and by having the court properly instruct the jury.

We urge the Committee to adopt the language proposed by victim advocacy groups and prosecutors to amend Criminal Rule 3.1.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sue Baur".

Sue Baur, President
Washington Association of
Prosecuting Attorneys